COMMENTS of Frederick County Commissioner C. Paul Smith on the September 2011 Draft of PlanMaryland

October 28, 2011

These comments are being presented to the Honorable Richard Hall, Secretary of the Maryland Department of Planning.

It is certainly appropriate for the Department of Planning to construct long-range goals and objectives for the State of Maryland in connection with the future development within the state. PlanMaryland proposes to do this. With certain modifications, PlanMaryland could be a good tool to articulate state goals and objectives and to promote coordination within the state government and among the counties. However, there should be some modifications in PlanMaryland before it is implemented. First, the pre-eminent power of local governments to control land-use and zoning should be unambiguously confirmed. Second, the plan should include a thorough plan for economic growth in the state that is integrated into the multiple environmental goals. If this latter change is not implemented, the economic viability of the state will fall victim to the excessive environmental interests that dominate and control the current version of PlanMaryland. Third, the plan is structured to be a tool to implement some pollution control measures whose efficacy is minimal and unproven, but whose cost is oppressive and economically debilitating.

I. GENERAL COMMENTS

PlanMaryland is a set of administrative guidelines to guide, direct and control future development in the entire state. The Department of Planning attempts to downplay the role of PlanMaryland in controlling land use in the counties, but the wording of the document itself seems to give great power to the State, through PlanMaryland, to take over the direction and control of land use in every county. The September version of PlanMaryland adds some statements that attempt to assure the local governments that it will not "take away local planning and zoning authority" and will not "force compliance with a statewide land-use plan" (p. 1-3). But the wording and structure of the balance of PlanMaryland does appear to empower the State to override and control local land use planning and zoning. Because of my concerns about state usurpation of land-use control, I suggest the inclusion of some additional language to confirm that counties retain local authority over zoning and land-use.

Burdensome Regulations. Even if this primary concern is properly addressed, PlanMaryland gives the State significant power to encourage and promote the type and location of growth that it prefers through its control over funding and various regulations. And in this respect, PlanMaryland becomes a tool of the State in advancing its goals and objectives. On the one hand, this is certainly appropriate, but it adds to the burden that counties are currently facing in addressing excessive, unwieldy, oppressive and scientifically flawed regulations in connection with state mandates to address water pollution. Current state mandates to clean up our waters is projected to cost Frederick County Maryland approximately \$5 Billion over the next six years. (That would cost each resident of Frederick County [including children and the elderly] \$3,333/year for six years--\$13,333/year for a family of four.) The enormity of these mandates—

the unfeasibility and impossibility of complying with these mandates—causes one to fear the unbridled power of the State to mandate unwieldy and oppressive actions. It is no comfort to taxpayers to learn that PlanMaryland will also be employed to support, encourage and enforce flawed, excessive and debilitating state mandates.

Control over Rural Counties. Another area of concern with PlanMaryland is that it undertakes to control and regulate land-use in the rural counties, more so than the urbanized areas of Baltimore City and Baltimore, Montgomery and Prince George's Counties. Basically, the approach of PlanMaryland is to say that the four urban counties/cities have already been built up with too much housing, too many roads and too much pollution, and the State will now implement a policy to protect the remaining forests and agricultural land in the State. Therefore, the primary focus of PlanMaryland is on the rural counties, particularly those with the potential for job and residential growth. There can be no mistake that the affect of implementing PlanMaryland will be more significant on Frederick County than on the more urban counties because Frederick County is an extremely attractive area for job and residential growth. The impact of State stormwater regulation mandates gives Frederick County great reason to be concerned that the State would use PlanMaryland to impose arbitrary and oppressive regulations and mandates on Frederick County and other rural counties.

Environmental Interests Control. PlanMaryland is guided and driven by environmental interests, with no meaningful discussion or evaluation of economic issues and concerns. The result of this is to create goals and objectives that are oblivious to important economic factors. The treatment PlanMaryland gives to economic concerns is merely lip service; it is superficial, and it is oblivious to the important economic factors that will affect growth in AND AROUND Maryland. As long as the State ignores the interstate affects of its policies and regulations, Maryland runs the risk of stopping growth in the state, and causing job and residential growth beyond our borders in other states. If the financial impact of regulations that are driven by environmental concerns are not tempered to mitigate the economic impact of such regulations, then those environmental policies will not only stop job growth in Maryland, but they will drive people out of the state, where they can get relief from unreasonable and excessive regulations.

Economic Interest Should Be Given a Prominent Role in PlanMaryland. The failure of PlanMaryland to seriously address economic issues is fatal. PlanMaryland is narrowly tailored to address environmental and natural resource issues. Frankly, there is nothing to indicate that the Department of Planning understands the importance of economic factors nor that it has the ability to evaluate and analyze them. Unless and until a serious, meaningful economic point of view is added to PlanMaryland, it should not be passed nor implemented.

II. SPECIFIC COMMENTS/CONCERNS

In addition to these broad concerns about PlanMaryland, I will now point out specific objections and concerns I have to various parts of the September draft of PlanMaryland.

A. Control of State over the Counties. It is a stated goal and "priority" of PlanMaryland to" maximize consistency and coordination within and across levels of

government"—this means to bring the counties in line with the PlanMaryland goals and objectives. In order to succeed, PlanMaryland must "align State and local plans, programs, and procedures." (See pages 2-30, 2-31 and 3-10.) This stated purpose is at odds with the continued autonomy and local land-use control of the rural counties. PlanMaryland goes on to warn (p. 2-31): "New strategies are needed to help State and local government, in partnership with the private sector, accomplish what existing laws and policies are not accomplishing." This is a clear threat that the State will implement new laws to accomplish the objectives of PlanMaryland. The State then proposes to call the process by which the new, state laws are established to be a "collaboration" (p. 2-32), and then it refers to the PlanMaryland implementation plan as the mechanism for managing and enforcing the "collaboration" plan (see p. 2-32, referring to Chapters 5 and 6 in the Plan). PlanMaryland states (at page 2-33) that the "local governments will deploy their capital, regulatory and assistance programs to achieve the Goals and Objectives of the Plan in Designated Places." This further shows that PlanMaryland would give the State control over local land use and zoning. Furthermore, PlanMaryland imposes "responsibilities" on local governments for the "development of Implementation Strategies" for PlanMaryland (page 2-34 and 3-10). This is not local control—it is state control.

PlanMaryland provides (at p. 2-32) that its "goals are intended as the guiding framework for all of Maryland's agencies, programs and procedures . . . in Maryland's population centers and rural communities." For the State to dictate this control and then to state at page 1-3 that PM will not "take away local planning and zoning authority" is an inconsistency that should be clearly resolved by an explicit statement that "local zoning and land-use control is retained by the counties, notwithstanding any statements to the contrary in PlanMaryland." If the State is not willing to include such a statement, it demonstrates that its statements about not impairing local authority in these matters is disingenuous.

PlanMaryland states that its "Visions, Goals and Objectives will not be embraced in the same ways in every jurisdiction," and that is how "markets" "make decisions vary across the State" (p. 3-1). But PlanMaryland does not reserve the right for local governments to have the autonomy to differ, rather PlanMaryland appears to give such authority to the State. This failure to specifically state that the Counties each retain exclusive control over their zoning and land-use issues is a fatal flaw in PlanMaryland.

PlanMaryland states: "The Goals and Objectives of PlanMaryland cannot be achieved without the cooperation and active participation of local governments helping to follow through with the Implementation Strategies that come out of this process." (Page 5-9.) PlanMaryland states that "it is equally important that local governments take steps to align their policies, programs and procedures for PlanMaryland to be successful." A Smart Growth Subcabinet is created to resolve issues. It, in turn, will operate with oversight and advice from the Maryland Sustainable Growth Commission (Page 6-1). This Commission is to "advise on the content and preparation . . . and the implementation of these plans, including the relationship of these plans with local land use plans" (Page 6-1). The Cabinet will work to align State and local governments with PlanMaryland goals and objectives (Pages 6-1 and 6-2).

B. County power to change existing zoning and land-uses may be impaired. In Chapter 4 it states that "Local governments may choose to participate and nominate" places for

designation" (page 4-1) to be subject to PlanMaryland, but the power of the local governments to have the final word should be specifically reserved. PlanMaryland proposes to use existing zoning and land use designations to determine "which land uses are allowed" (page 4-1), but it appears that the State may prevent localities from changing zoning and land uses in the future, if such changes would be at odds with PlanMaryland goals or objectives. PlanMaryland specifically provides that the State can designate Special Areas without the consent of the local government (Page 4-13). Local governments are given the right to ask the State for changes in "Special Areas," but local governments do not control this process (page 4-13).

- <u>C. Control land-use in rural counties</u>. It appears that the main goal of PlanMaryland is to prevent the rural counties like Frederick, Carroll and Washington from becoming suburbanized like Baltimore City and Baltimore, Montgomery and Prince George's Counties. PlanMaryland is a plan to dictate to the rural counties how they can and cannot develop.
- **D.** Concern for low income populations. The focus in PlanMaryland to "Improve opportunities for low income populations" (page 2-30) and "improve housing affordability" (page 3-8 and 3-9) sounds innocuous on its face, but the failure of PlanMaryland to recognize and address the need to improve opportunities for high income population is a fatal oversight. While it may not be politically correct to express any concern about high income people, the fact is that job growth in the private sector is driven by opportunities for high income people. Failure to recognize and address this will be fatal to the viability of the economic aspirations in PlanMaryland.
- **E. Global Warming.** PlanMaryland includes the speculative claims of the Gobal Warming alarmists that human energy consumption is causing global warming that will cause the ocean levels to rise 1.3 feet by 2050 and 3.4 feet by 2100. (See page 2-18.) There is no consensus among scientists about this; according to my information, there is a split in opinions about this, and I do not find the reasoning of the man-made global warming advocates to be convincing. Nevertheless, PlanMaryland endorses this speculative view, and then it uses this speculation as a basis to take other drastic measures that will bring significant economic harm to Maryland without causing any meaningful improvement to the environment. PlanMaryland includes the mandate to "Address climate change" (p. 3-7) in unspecified ways. This is reckless and unwise.
- **F.** Opposition to new residences on large parcels of land. PlanMaryland overtly attacks the building of new residences on large tracts of land. (See e.g., pages 2-2, 2-7, 2-16, 2-20, 2-21, 2-29 and 4-4) Then the State makes the illogical leap to conclude that this type of development will harm the State's environment. The rationale for this unsubstantiated conclusion is totally lacking; it fails to acknowledge that the environment is better protected by limiting the number of dwelling units on an area of land.
- G. Technical definition of "Sprawl" is problematic. PlanMaryland gives a technical definition to "sprawl" that has some consequences and implications that are extreme and sometimes have adverse consequences to wise planning. It defines sprawl as "low density housing" (page 3-4). PlanMaryland then goes on to attack sprawl as the enemy of smart growth and the enemy of PlanMaryland. (See pages 1-1 to 1-5.)

III. CONCLUSION

Before its passage and implementation, PlanMaryland should be amended to provide for the following three major changes: (1) Confirm that counties and municipalities retain direct and primary authority and control over land use and planning; (2) Include a thorough state plan for economic growth that is integrated into the multiple environmental goals; and (3) Separate the plan from involvement in enforcing pollution control measures whose efficacy is minimal and unproven, but whose cost is oppressive and economically debilitating.

This memo also addresses other concerns and problems with the current draft of PlanMaryland, which, if corrected, would make PlanMaryland better. Nevertheless, as long as the three major concerns are addressed, the local governments will be able to deal with those other concerns, in the event they are not corrected.

<u>Local Control</u>. The State insists that PlanMaryland does not divest the Counties of direct and primary control over land use and planning. If the State is sincere in this statement, then the State should add language to PlanMaryland that specifically provides for this result. The failure to do so makes PlanMaryland unacceptable.

Economic Plan. Unless it is corrected, PlanMaryland could be renamed "Ruin Maryland" because its effect will be to depress the economic health of the private sector in Maryland. Unemployment is currently very low in Maryland due to the many governmental jobs. Maryland should build on this foundation, and take measures to make Maryland an attractive jurisdiction for private jobs. However, PlanMaryland actually attacks private jobs and blocks the entry of new jobs by virtue of its support of excessive and radical environmental policies, the cost of which far exceeds the value of the environmental benefits sought to be achieved. PlanMaryland echoes the growth projection that one million new residents will reside in Maryland by 2035. But the components of the Plan are geared to block the growth that the Plan projects. The PlanMaryland objectives to preserve rural lands would block job growth and residential growth in rural areas. Of course, the preservation of undeveloped land is desirable, but adding one million more people to the State of Maryland will tax the state's natural resources. Any growth in jobs and population will necessarily have an adverse impact on natural resources. The only way to stop the adverse impacts of growth on the environment is to prevent growth—and that is what current Maryland laws and policies do. But it is disingenuous for the State to say that it is planning for and accommodating an increase of one million more residents, when its policies are actually intended to block the growth that it says it projects. The reality is that Maryland is committed to a course that will block future job growth. The section on economic growth in PlanMaryland is disingenuous. The combined effect of Maryland's various policies to protect the environment is to discourage and block economic growth. The result of this will be that much of the growth currently projected to come to Maryland will instead end up in Virginia, Pennsylvania and West Virginia. In my opinion, Maryland should actively promote the growth of private jobs in the state, but Maryland must recognize that there will be some environmental damage from this. Maryland cannot be expected to achieve the level of environmental sustainability that Iowa or Oregon or Arkansas can sustain. But the number of jobs made available in Maryland is a benefit to the nation that must be offset by environmental practices in other states as well the best feasible efforts in Maryland.

Excessive Environmental Regulations. The failure of the State to correct the excessively harsh septic laws and regulations continues to make PlanMaryland unacceptable. This makes PlanMaryland an instrument to enforce some land development policies that are scientifically flawed and economically devastating to the more rural counties. The State espouses its support of the erroneous notion that handling waste through a septic system causes ten times more Nitrogen to enter The Chesapeake Bay than handling that waste through a sewage treatment plant. This claim is unproven and unsupported by sound science.

I submit that PlanMaryland would be strengthened and improved if the suggestions I have made are included. If you have questions, or if you would like to discuss any of these matters, please let me know.

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